

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**MERLE L. WHITEHEAD,**

**Plaintiff, Civil Action No: 3:07-cv-846  
(TJM/DEP)**

**v.**

**SELECTIVE INSURANCE COMPANY OF  
NEW YORK,**

**Defendant.**

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**ORDER**

Defendant Selective Insurance Company of New York, a Write-Your-Own (“WYO”) program carrier participating in the U.S. Government’s National Flood Insurance Program (“NFIP”) pursuant to the National Flood Insurance Act of 1968, as amended,<sup>1</sup> (“NFIA”), brought a motion for summary judgment seeking to dismiss Plaintiff Merle L. Whitehead’s action for U.S. Treasury benefits pursuant to the Standard Flood Insurance Policy (SFIP) on the ground that Plaintiff failed to comply with the conditions precedent to the filing of this lawsuit, and the motion having come on regularly to be heard on the 10<sup>th</sup> day of November, 2008, and it appearing that notice of the motion was given to Plaintiff pursuant to Rule 56(c) of the Federal Rules of Civil Procedure on the 1<sup>st</sup> day of October, 2008, and the court having considered the Attorney Affidavit of Michael C. Weber, sworn to the 1<sup>st</sup> day of October, 2008, the Defendant’s Statement of Material Facts pursuant to Local Rule 7.1(a)(3), dated October 1, 2008, the

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<sup>1</sup> 42 U.S.C. § 4001, *et seq.*

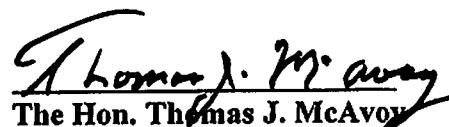
Defendant's Memorandum of Law in Support of Summary Judgment, dated October 1, 2008, and the accompanying exhibits, all submitted in support of the motion, and the Attorney Affidavit of Jonathan A. Mugel, sworn to the 24<sup>th</sup> day of October, 2008, the Plaintiff's Response to Defendant's Statement of Material Facts, dated October 24, 2008, Plaintiff's Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment, dated October 24, 2008, and the accompanying exhibits, all submitted in opposition to the motion, and the Attorney Affidavit of Michael C. Weber, sworn to the 30<sup>th</sup> day of October, 2008, the Defendant's Reply Memorandum in Support of Motion for Summary Judgment, dated October 30, 2008, and the accompanying exhibits, all submitted in further support of the motion and in reply to Plaintiff's opposition thereto,

AND having reviewed the above-referenced written submissions, and the pleadings on file, as well as having heard oral argument on the motion at the Court's November 10, 2008 motion term, and Michael C. Weber, Esq. of the Nielsen Law Firm, L.L.C. and Nicole Marlow-Jones, Esq. of Costello, Cooney & Fearon, P.L.L.C., appearing as counsel for the Defendant, and Jonathan A. Mugel, Esq. of Hodgson Russ, L.L.P. appearing as counsel for the Plaintiff, and having deliberated on same,

AND following oral argument, having rendered a decision from the bench, which is hereby incorporated herein, the Court finds that there is no genuine issue as to any material fact and that Defendant is entitled to judgment as a matter of law. Therefore,

**IT IS HEREBY ORDERED** that, Defendant's motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure seeking dismissal of Plaintiff's Complaint in its entirety, with prejudice, be, and it hereby is, granted; and,

**IT IS FURTHER ORDERED** that the clerk is directed to enter judgment in this action dismissing all claims asserted by Plaintiff Merle L. Whitehead against Defendant Selective Insurance Company of New York.



The Hon. Thomas J. McAvoy  
Senior U.S. District Judge

Dated: 11/19/08, 2008  
Albany, New York